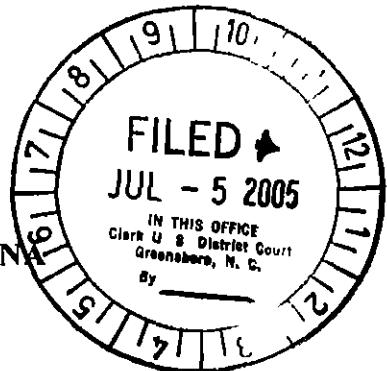


55ds frm

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA



Latoya Shavette Pollard,)
Petitioner,) 1:05CV00605
v.) 1:04CR131-2
United States of America,)
Respondent.)

**ORDER OF DISMISSAL WITHOUT PREJUDICE
TO PETITIONER FILING A NEW MOTION**

Petitioner, a federal prisoner, has submitted a motion to vacate, set aside, or correct sentence pursuant to 28 U S C § 2255. This motion cannot be further processed for the following reasons:

- 1 An insufficient number of copies was furnished. Petitioner must submit an original and two copies. Rule 3(a), Rules Governing § 2255 Proceedings. Note that at least one of the copies must bear petitioner's original signature.
- 2 The two copies of the memorandum submitted are not identical. One contains copies of exhibits which the other does not. This is not proper. All three sets of documents (motion form, memorandum, exhibits) must be identical. Petitioner is advised that the court will have access to all documents filed in her criminal action, therefore she need not submit such documents as exhibits.

Because of these pleading failures, this particular motion will be dismissed, but without prejudice to petitioner filing a new motion properly following the 28 U S C § 2255 forms, correcting the defects of the present motion. The Court has no authority to toll the statute of limitation, therefore it continues to run, and petitioner must act quickly if he intends to pursue this motion. See Spencer v. Sutton, 239 F.3d 626 (4th Cir. 2001).

IT IS THEREFORE ORDERED that this action be filed and dismissed sua sponte without prejudice to petitioner filing a corrected motion on the proper § 2255 forms. To further aid petitioner, the Clerk is instructed to send petitioner § 2255 forms and instructions.



United States Magistrate Judge

July 5, 2005